

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PATRICIA MONTYSKO,

Plaintiff,

-against-

6:05-CV-250
(LEK/GJD)

JO ANNE B. BARNHART,
Commissioner of Social Security

Defendant.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on December 22, 2006, by the Honorable Gustave J. DiBianco, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(c) of the Northern District of New York. Report-Rec. (Dkt. No. 9).

Within ten days, excluding weekends and holidays, after a party has been served with a copy of a Magistrate Judge's Report-Recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations," FED. R. CIV. P. 72(b), in compliance with L.R. 72.1. No objections have been raised in the allotted time with respect to Judge DiBianco's Report-Recommendation. Furthermore, after examining the record, the Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

Accordingly, it is hereby

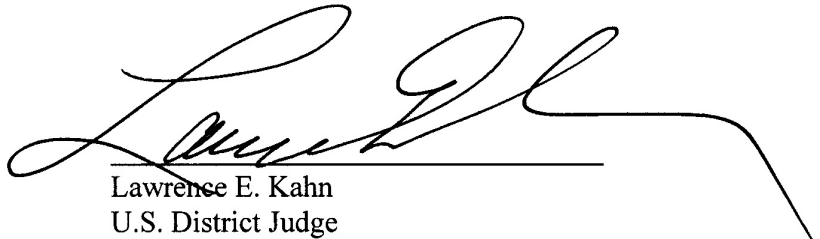
ORDERED, that the Report-Recommendation (Dkt. No. 9) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

ORDERED, that the Commissioner's decision is **REVERSED** and this case is **REMANDED** pursuant to Sentence Four of 20 U.S.C. § 405(g) for a proper determination of RFC, pain, and ability to perform alternative work in the national economy, consistent with the Report-Recommendation and this Order; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: February 06, 2007
Albany, New York



Lawrence E. Kahn
U.S. District Judge